

transferring the first protection rule from said server to the portal;
receiving at the portal the communication transaction;
applying at the portal the first protection rule to the communication transaction;
preventing at the portal the transfer of the communication transaction if required by the first protection rule;
selectively transferring from the portal to the server at least a portion of the communication transaction even if the first protection rule allows transfer of the communication transaction; and
selectively creating at the server a second protection rule in response to said portion of the communication transaction.

Remarks

With respect to the Cross Reference to Related Application, Applicants have herein amended the specification to indicate the abandoned status thereof.

With respect to the rejection of claims 1-19 under 35 U.S.C. § 103 (a), Applicants wish to note that the Manual of Patent Examining Procedures (MPEP) § 2142 provides, *inter alia*:

The legal concept of *prima facie* obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process. See *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976); *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972); *In re Saunders*, 444 F.2d 599, 170 USPQ 213 (CCPA 1971); *In re Tiffin*, 443 F.2d 394, 170 USPQ 88 (CCPA 1971), *amended*, 448 F.2d 791, 171 USPQ 294 (CCPA 1971); *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness. If, however, the examiner does produce a *prima facie* case, the burden of coming forward with evidence or arguments shifts to the applicant who may submit additional evidence of nonobviousness, such as comparative test data showing that the claimed invention possesses improved properties not expected by the prior art. The initial evaluation of *prima facie* obviousness thus relieves both the examiner and applicant from evaluating evidence beyond the prior art and the evidence in the specification as filed until the art has been shown to suggest the claimed invention.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make

the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria. (emphasis added.)

In support of the rejection of claims 1-4, 9-13, 18 and 19 as being unpatentable over Nessett in view of Sheldon, the Examiner has attempted to identify in either Nessett or Sheldon those structures or functions that correspond to each of the limitations in Applicants' claims. In this regard, Applicants respectfully submit that the Examiner has either misinterpreted the language of Applicants' claims or misunderstood the cited references. As a result, Applicants believe that the Examiner has failed to establish a *prima facie* case of obviousness.

1. In both claims 1 and 10, line 10, Applicant's portal is expressly characterized as being capable of "*selectively* transfer[ring] the database of protection rules from the server via the untrustworthy network" (emphasis added). In Applicants' specification, page 8, lines 3-10, Applicants have given an example of how each portal will *selectively* update its own "local protection rule base". (See, also, page 8, lines 27-31.) In the Office Action, the Examiner has broadly asserted that "[u]dates to the security policy statements (protection rules) are selectively transferred from the network management station's (server) database to the firewalls (portals) across the Internet (untrustworthy network)", citing in support thereof Nessett, col. 9, lines 17-32 and col. 10, lines 28-31. However, the Examiner failed to take into account where, in the Nessett system, such selectivity is effected. According to the cited clause of col. 9, in Nessett, the "security policy management back end translates the rules ... and creates node specific security policy configuration data that it distributes to the network nodes it has chosen." (emphasis added). Thus, in Nessett, it is the "server" that "selectively" transfers the protection rules, whereas, in Applicant's claim 1 (as well as claim 10), it is the portal that "selectively" transfers those rules. Further, the Examiner has identified no such portal-side selectivity in Sheldon. Thus, the Examiner has failed to establish a *prima facie* case of obviousness because, at a minimum, the Examiner has produced no reference (or references when combined) that teach or suggest this claim limitation. Thus, since the rejections of claims 1 and 10 are improper, the rejections of all claims depending therefrom, namely 2-9 and 11-18, are also improper.

2. Notwithstanding that the rejections of claims 2 and 11 are improper as noted in ¶1, above, Applicants wish to point out that the clause in Nessett cited by the Examiner in support of these rejections (col. 16, lines 21-24) fails to indicate whether or not any such "cryptography" is used in the process of transferring the protection rule database, *per se*. Indeed, just a few lines earlier, *i.e.*, in lines 13-20, Nessett specifically identifies "two places" where "protected communications is an important service", and neither appears to cover the transfer of the protection rule database. In view of this, Applicants respectfully submit that the Examiner has produced no reference (or references when combined) that teach or

suggest this claim limitation. Thus, independent of the rejection of the respective parent claims, the express rejection of claims 2 and 11 are improper.

3. Notwithstanding that the rejections of claims 3 and 12 are improper as noted in ¶1, above, Applicants wish to point out that the clause in Nessett cited by the Examiner in support of these rejections (col. 17, lines 32-40, see, Office Action, page 4, line 21, through page 5, line 2) fails to teach or even suggest that a portal may "*selectively* transfer[a] received communication transaction [even if that transaction violates a protection rule, provided that] said protection rule is of the guard class" (claims 3 and 12, lines 10-14). In Applicants' specification, page 10, lines 6-13, Applicants have given examples of how each portal may *selectively* transfer a transaction even if it is found to violate a "Guard rule". In the Office Action, the teachings of Nessett have been "interpreted by the examiner" such that Nessett selects between "two classes ..., namely an exclusion class that denies network traffic ... and a guard class that permits the transfer of network traffic" (Office Action, page 5, lines 2-7), citing in support thereof Nessett, col. 17, lines 32-40. According to the cited clause of col. 17, in Nessett, "traffic is denied, allowed or transformed." (col. 17, lines 39-40). Thus, in Nessett, there appears to be no ability to *selectively* allow traffic, nor is there any suggestion that such functionality could be provided. Further, the Examiner has identified no such selectivity in Sheldon. Thus, the Examiner has failed to establish a *prima facie* case of obviousness because, at a minimum, the Examiner has produced no reference (or references when combined) that teach or suggest this claim limitation. Thus, since the rejections of claims 3 and 12 are improper, the rejections of all claims depending therefrom, namely 4-9 and 13-18, are also improper, independent of the rejection of the respective parent claims.

4. Notwithstanding that the rejections of claims 4 and 13 are improper as noted in ¶¶1 and 3, above, Applicants wish to point out that the clauses in Nessett cited by the Examiner in support of these rejections (col. 9, lines 17-32 and col. 10, lines 28-31) fail to teach or even suggest that a "portal [may] *selectively* transfer[] to the server at least a portion of each received communication transaction" (claims 4 and 13, lines 1-2, emphasis added). In Applicants' specification, page 7, lines 12-19, Applicants have given an example of how each portal will *selectively* transfer to the server selected portions of a transaction if it is found to be "unexpected". (See, also, page 14, line 17, through page 15, line 6.) In the Office Action, the Examiner has identified no portion of Nessett in which any such functionality is either taught or suggested. Indeed, in Nessett, there appears to be no ability whatsoever for a portal-like device to *selectively* transfer back to the server any portion of any transactions, nor is there any suggestion that such functionality could be provided. Further, the Examiner has identified no such selectivity in Sheldon. Thus, the Examiner has failed to establish a *prima facie* case of obviousness because, at a minimum, the Examiner has produced no reference (or references when combined) that teach or suggest this claim limitation. Thus, since the rejections of claims 4 and 13 are improper, the rejections of all claims depending therefrom, namely 5-9

and 14-18, are also improper, independent of the rejection of the respective parent claims.

5. In claim 19, line 9, Applicant's portal is expressly characterized as being capable of "*selectively* transferring the database of protection rules from the server via the untrustworthy network" (emphasis added). In Applicants' specification, page 8, lines 3-10, Applicants have given an example of how each portal will *selectively* update its own "local protection rule base". (See, also, page 8, lines 27-31.) In the Office Action, the Examiner has broadly asserted that "[u]dates to the security policy statements (protection rules) are selectively transferred from the network management station's (server) database to the firewalls (portals) across the Internet (untrustworthy network)", citing in support thereof Nessett, col. 9, lines 17-32 and col. 10, lines 28-31. However, the Examiner failed to take into account where, in the Nessett system, such selectivity is effected. According to the cited clause of col. 9, in Nessett, the "security policy management back end translates the rules ... and creates node specific security policy configuration data that it distributes to the network nodes it has chosen." (emphasis added). Thus, in Nessett, it is the "server" that "selectively" transfers the protection rules, whereas, in Applicant's claim 19, it is the portal that "selectively" transfers those rules. Further, the Examiner has identified no such portal-side selectivity in Sheldon. Thus, the Examiner has failed to establish a *prima facie* case of obviousness because, at a minimum, the Examiner has produced no reference (or references when combined) that teach or suggest this claim limitation. Thus, the rejection of claim 19 is improper.

In support of the rejection of claims 5-8 and 14-17 as being unpatentable over Nessett in view of Sheldon in further view of Joyce, the Examiner has attempted to identify in either Nessett or Sheldon or Joyce those structures or functions that correspond to each of the limitations in Applicants' claims. In this regard, Applicants respectfully submit that the Examiner has either misinterpreted the language of Applicants' claims or misunderstood the cited references.

1. Notwithstanding that the rejections of claims 5 and 14 are improper as noted in ¶¶1, 3 and 4, above, Applicants wish to point out that the clauses in Nessett expressly cited by the Examiner in support of these rejections (primarily col. 17, lines 32-40) fail to teach or even suggest that a "server, in response to receiving [from a portal a] portion of a communication transaction ..., analyzes said portion [and, under certain circumstances] constructs a new protection rule [then] adds said new protection rule to [the protection rule] database" (claim 5, lines 1-7, emphasis added; cf., claim 14, lines 2-10). In Applicants' specification, page 7, line 20, through page 8, line 3, Applicants have given an example of how the server will receive selected portions of transactions sent to it by a portal, analyze those portions and, if found to constitute a threat, automatically construct a new rule of appropriate scope. (See, also, page 15, lines 18-20, and page 15, line 27, through page 16, line 10.) In the Office Action, the Examiner has identified no portion of Nessett in which any such functionality is either taught or suggested. Indeed, in Nessett, there

appears to be no ability whatsoever for the server-like device to receive any thing from a portal-like device, much less any portion of any transactions; nor is there any suggestion that such functionality could be provided. Further, the Examiner has identified no such selectivity in either Sheldon or Joyce. Thus, the Examiner has failed to establish a *prima facie* case of obviousness because, at a minimum, the Examiner has produced no reference (or references when combined) that teach or suggest this claim limitation. Thus, since the rejections of claims 5 and 14 are improper, the rejections of all claims depending therefrom, namely 6-8 and 15-18, are also improper, independent of the rejection of the respective parent claims.

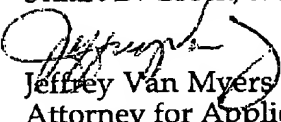
New Claims:

Applicants have herein added new independent claims 20, 21, 22 and 23, each of which particularly points out and distinctly claims what Applicants believe to be an independently patentable embodiment of Applicants' invention as described in the application as filed. Applicants have herein enclosed the appropriate fees and Fee Transmittal record.

Conclusion:

Applicants respectfully request entry of the amendment proposed hereinabove. Further, Applicants respectfully submit that claims 1-23 are allowable over the cited art. Therefore, in the belief that we have responded to each and every rejection contained in the Office Action of 10 February 2004, Applicants respectfully request reconsideration and allowance of claims 1-23.

Respectfully submitted,
Stuart D. Green, *et al.*


Jeffrey Van Myers
Attorney for Applicants
Reg. No. 27,362
Ph: 512/858-7453